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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CLERK, USDC / SDFL / WPB

Case No. 00-6023 CIV-Hurley
Magistrate Lynch

R/S ASSOCIATES, a Florida limited
partnership, and DAN SHOOSTER,

Plaintiffs,

vs.

BOB YARI, and FORUM ARLINGTON
PROPERTIES, LTD., and ALLIANCE
MANAGEMENT CO., LLC.,

Defendants.

_____ /

**DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' REQUEST FOR AN EVIDENTIARY HEARING**

Come now the Defendants, Bob Yari, Forum Arlington Properties, Ltd. and Alliance Commercial Management Co., LLC., by and through their undersigned counsel, to file their opposition to the request of Plaintiffs for an Evidentiary Hearing, stating:

1. The Plaintiffs' Request for an Evidentiary Hearing ("Request") is procedurally inadequate. It does not follow Rule 7.1B of the Local Rules for the Southern District of

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Florida, which requires a party to "set forth in detail the reasons why a hearing is desired and would be helpful to the Court." On that basis alone, Plaintiffs' Request should be denied.

2. The Request should also be denied for substantive reasons. After Defendants filed their Motion to Dismiss and supporting affidavit, the burden was on the Plaintiffs to prove by affidavit the basis upon which jurisdiction could be obtained. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502-03 (Fla. 1989) ("In most cases, the affidavits can be harmonized and the court will be in a position to make a decision upon facts which are essentially undisputed").

3. The affidavits of Bob Yari and Willard Hart on behalf of the Defendants and Dan Shooster on behalf of Plaintiffs can be reconciled and read in harmony.

4. Because the material facts essentially are not in dispute, the court can and should decide the Motion to Dismiss based on the affidavits, as did the trial court in *Jet Charter Service, Inc. v. Koeck*, 907 F.2d 1110, 1113 (11th Cir. 1990) (affirming the trial court's order dismissing the complaint for lack of personal jurisdiction, based upon the affidavit of the bank's officer and the counteraffidavit of the president of the plaintiff corporation).

WHEREFORE, the Defendants respectfully request that the Court deny Plaintiffs' request for a two hour evidentiary hearing and that it decide the jurisdictional issue based on the parties' harmonious affidavits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished by U.S. mail to KEITH A. GOLDBAUM, ESQUIRE, Friedman, Rosenwasser & Goldbaum, P.A., 5355 Town Center Road, Suite 801, Boca Raton, Florida 33486, this 6th day of March, 2000.

Respectfully submitted,

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